

**7.18 Gencarelli Guaranty.** Upon execution and delivery of this Agreement, Gencarelli will execute and deliver to Bess Eaton a guaranty in form satisfactory to the Bess Eaton creditors' committee and otherwise reasonably satisfactory to the Purchaser, by which Gencarelli guaranties that, if the Closing occurs, the allowed claims of all creditors in Bess Eaton's Bankruptcy Case will be paid in full (the "Gencarelli Guaranty"). The amount of allowed claims shall be the amount of claims of creditors either agreed to, or failing agreement, as determined by order of the Bankruptcy Court.

**7.19 Weekly Sales.** The Vendor will on an ongoing basis up to the Effective Time provide the Purchaser with weekly sales results for Bess Eaton within 5 days of the end of each such week.

**7.20 Non-Competition Covenants.** In consideration of payment of the aggregate sum of \$75,000 (\$25,000 payable to Bess Eaton and \$50,000 payable to Gencarelli) Bess Eaton and Gencarelli will each on Closing enter into a 5 year non-competition agreement in the form attached as Schedule 8.1(k).

**7.21 Eastern Bank.** Bess Eaton will arrange to purchase from Eastern Bank on the Closing the personal property listed on Schedule 2.1(b)II and will sell such personal property on the Closing Date to the Purchaser as part of the Bess Eaton Assets and with a portion of the Bess Eaton Assets Purchase Price being used to acquire the personal property from Eastern Bank, all as approved by the Bankruptcy Court.

**7.22 Interim Financial Statements.** The Interim Financial Statements, other than weekly sales results, will be prepared by the Vendor and provided to the Purchaser at least 7 business days prior to Closing.

**7.23 Gencarelli Acknowledgement.** Gencarelli acknowledges that he will not become an employee of the Purchaser on Closing.

**7.24 Wendy's Approval.** The Purchaser shall take all necessary steps to present the transactions contemplated by this Agreement to the Executive Committee of Wendy's International, Inc. and to the board of directors of Wendy's International, Inc. for their review and consideration with the decision to be reached on or before February 28, 2004, and communicated promptly thereafter, and if such approvals are not obtained by such time this Agreement will automatically terminate unless the parties agree otherwise in writing.

**7.25 Mortgage Loan from Purchaser.** The Purchaser agrees on Closing to advance to Bess Eaton the sum of \$2,000,000 to be secured by a first mortgage and collateral assignment of rents of the Bess Eaton bakery and office/warehouse properties described on Schedule 7.25A in form reasonably satisfactory to the Purchaser having a two year term, bearing interest at 5% per annum (the "First Mortgage") and becoming due and payable on the first to occur of the sale of either the bakery or the office/warehouse property, if Gencarelli ceases to own all the shares of Bess Eaton, on the expiry of two years following the Closing or the effective date of a plan of reorganization in the Bankruptcy Case and including statutory mortgage covenants. Gencarelli will unconditionally guarantee payment of the First Mortgage debt and agrees to deliver on Closing a guaranty in the form of Schedule 7.25B (the "Gencarelli Mortgage Guaranty"). The

First Mortgage shall also provide that if the principal balance is prepaid within 6 months of Closing the accrued interest will be waived, if the principal is repaid after 6 months following Closing but prior to the first anniversary of Closing the accrued interest will be reduced to 2.5%. If the First Mortgage debt is not paid in full on or before the second anniversary of Closing or any other date on which the First Mortgage debt becomes due and payable, the Purchaser shall have the right, but not the obligation to set off all or part of the principal balance owing under the First Mortgage and all accrued interest, against the balance owing under the promissory note referenced in Section 3.3(e). Accrued interest for the first year following the Closing Date shall be payable on the first anniversary of the Closing Date and interest thereafter shall be payable monthly.

**7.26 COBRA.** Vendor shall report the sale of assets to the Rhode Island Director of Labor and Training at least five days before Closing including all required information, and all contributions to the Rhode Island unemployment insurance fund must be paid up to date by the same deadline. In respect of the 4 Connecticut sites being closed Bess Eaton will terminate any employees the Purchaser advises will not be offered positions at alternative locations and unless the Bankruptcy Court orders otherwise, Bess Eaton will prepay on Closing 4 months health insurance benefits for such employees under the Purchaser's benefit plans pursuant to applicable Connecticut law. The Purchaser will offer to the Excluded Employees listed on Schedule 7.26 and the Employees participation in a health insurance plan at the employee's expense for the maximum required period under COBRA and will indemnify and hold the Vendor harmless in respect of any claims by the Excluded Employees in respect of their COBRA rights.

**7.27 Mason's Deli.** The Vendor will notify Mason's Deli in writing that its lease as listed on Schedule 2.2(d) will not be renewed with the result that it will expire on March 31, 2004.

**7.28 Mortgage.** The obligation of the Purchaser to make payment under the promissory note referenced in Section 3.3(e) shall be secured by a collateral mortgage and assignment of rents in form reasonably satisfactory to Gencarelli containing statutory mortgage covenants secured against three properties (known municipally as 127 High Street, Westerly, Rhode Island, 25 West Broad Street, Pawcatuck, Connecticut and 125 Granite Street, Westerly, Rhode Island). The Purchaser shall have a right to a partial discharge against any property selected by the Purchaser once the principal amount owing under the promissory note has been reduced (by payment or by set off) provided that the remaining properties covered by the collateral mortgage have an allocated value at least equal to 130% of the principal amount then outstanding under the promissory note. The Purchaser shall at Purchaser's expense add Gencarelli as a named insured in his capacity as mortgagee on Purchaser's title insurance policies.

**7.29 Former Franchises.** The Vendor shall obtain from its former franchisee, Bess Eaton of New Britain, Inc. a release of all claims, including in respect of the trade mark "Bess Eaton" in a form satisfactory to the Purchaser and without payment of any consideration; and an executed original copy of such release shall be delivered to the Purchaser at or before the Closing.

**7.30 Termination of 401(k) Plan.** The Vendors shall initiate termination of Bess Eaton's 401(k) promptly following the Closing Date.

**7.31 Notice of Known Breaches.** Prior to the Closing, each of the Purchaser and the Vendor shall notify the other in writing of any breaches of the representations, warranties, and covenants of the other set forth in this Agreement and of which the notifying party has actual knowledge. A party shall not have actual knowledge of a breach for purposes of this Section 7.31 unless (a) in the case of the Purchaser, any of Jim Nesbitt, Alfred Lane, Steve Kahansky, or Meredith Michetti has actual knowledge of such breach or (b) in the case of the Vendor, Gencarelli, Lee Goldberg, or Tim Henson has actual knowledge of such breach. In the event of a dispute as to whether the Purchaser or the Vendor has complied with the terms of this Section 7.31, the burden of proving actual knowledge shall be on the party asserting non-compliance by the other party. The rights of a party under this Agreement to terminate this Agreement on account of a breach, to elect not to proceed to close the transactions contemplated by this Agreement on account of a breach, or to close the transactions contemplated by this Agreement and seek indemnification on account of a breach, shall not be impaired by the party's giving to the other party notification of the breach as provided in this Section 7.31.

**7.32. Diligence Materials.** The Purchaser will provide to the Vendor, promptly following receipt by the Purchaser of the following (or in the case of the site plans referred to in the following clause (iii), promptly following request from the Vendor): (i) the Phase 1, Phase 2, and other environmental reports received by the Purchaser pursuant to Section 7.4, (ii) surveys and title insurance commitments received by the Purchaser pursuant to Section 7.5, (iii) any Bess Eaton store site plans received from the Vendor, and (iv) any written reports with respect to septic systems serving the real properties included in the Purchased Assets that are received by the Purchaser. The Vendor agrees that it shall not rely on any of such material or the information contained therein and that neither the Purchaser nor any of its Affiliates shall have any liability in respect of such material or the information contained therein. From and after the filing of the Bankruptcy Cases, the Vendor may give access or copies of any such material or the information contained therein to any Person contemplating making a bid for the Purchased Assets, provided that prior to providing such access or copies, the Person to which such access or copies are proposed to be given executes and delivers to the Purchaser a written agreement, in form and substance satisfactory to the Purchaser, by which such Person agrees that it shall not rely on any of such material or the information contained therein and that neither the Purchaser nor any of its Affiliates shall have any liability in respect of such material or the information contained therein.

**7.33 Wendy's Guaranty.** If the transactions contemplated by this Agreement are approved by the Executive Committee and the board of directors of Wendy's International, Inc., then on or before Monday, March 1, 2004, the Purchaser will deliver to the Vendor a guaranty, duly executed by Wendy's International, Inc. in the form of the attached Schedule 7.33 guaranteeing the Purchaser's financial capacity and corporate authority to perform all legally enforceable obligations undertaken in this Agreement.

## 8. CONDITIONS OF CLOSING

8.1 **Conditions of Closing in Favor of the Purchaser.** The purchase and sale of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Purchaser, to be performed or fulfilled at or prior to the Effective Time:

- (a) **Representations and Warranties** The representations and warranties of Bess Eaton and Gencarelli contained in this Agreement shall be true and correct in all material respects, except for the commencement of the Bankruptcy Case and that any representation and warranty which is qualified by the word "material" shall be true and correct in all respects at the Effective Time with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate of the President and the Controller of Bess Eaton, dated the Closing Date, together with a certificate of Gencarelli, dated the Closing Date, to that effect shall have been delivered to the Purchaser, such certificate to be in form and substance satisfactory to the Purchaser, acting reasonably, and where such changes have caused the representations and warranties to be inaccurate in any respect, such certificate shall set out such changes;
- (b) **Covenants** All of the terms, covenants and conditions of this Agreement to be complied with or performed by Bess Eaton and Gencarelli at or before the Effective Time shall have been complied with or performed in all material respects, and a certificate of the President and the Controller of Bess Eaton, dated the Closing Date, together with a certificate of Gencarelli, dated the Closing Date, to that effect shall have been delivered to the Purchaser, such certificate to be in form and substance satisfactory to the Purchaser, acting reasonably;
- (c) **Regulatory Consents** There shall have been obtained from all appropriate federal, state, municipal or other governmental or administrative bodies such licenses, permits, consents, approvals, certificates, registrations and authorizations as are required to be obtained by Bess Eaton to permit the change of ownership of the Purchased Assets contemplated hereby, including, without limitation, those described in Schedule 5.18A, in each case in form and substance satisfactory to the Purchaser, acting reasonably;
- (d) **Contractual Consents** Unless otherwise addressed to the satisfaction of the Purchaser in the Approval Order, Bess Eaton shall have given or obtained the notices, consents and approvals described in Schedule 5.18B (including estoppel certificates from the Vendor's landlords confirming that all rent and other obligations have been paid to date and that to the landlord's knowledge the Vendor is not otherwise in default under the lease, non-disturbance agreements from mortgagees and from the head landlords on sites subleased by Bess Eaton or Gencarelli in a form satisfactory to Purchaser, and certificates of occupancy for both leased and owned properties), in each case in form and substance satisfactory to the Purchaser, acting reasonably;

- (e) **No Material Adverse Change in Sales.** Since January 1, 2004, there shall have been no material adverse change in the sales revenues of the Purchased Business;
- (f) **No Action or Proceeding** No legal or regulatory action or proceeding shall be pending or threatened by any person, including but not limited to George Cioe, which would, in the opinion of the Purchaser, acting reasonably, enjoin, restrict, prohibit or adversely affect:
  - (i) the purchase and sale of the Purchased Assets contemplated hereby; or
  - (ii) the Purchaser from carrying on the Purchased Business in the manner in which the Vendor is carrying on the Purchased Business at the date hereof;
- (g) **No Material Damage** No material damage by fire or other hazard to the whole or any material part of the Purchased Assets shall have occurred from the date hereof to the Effective Time;
- (h) **No Adverse Legislation** No legislation (whether by statute, regulation, order-in-council, notice of ways and means motion, by-law or otherwise) shall have been enacted, introduced or tabled which, in the opinion of the Purchaser, acting reasonably, adversely affects or may adversely affect the Purchased Business;
- (i) **Discharge of Encumbrances** The Vendor shall have delivered to the Purchaser evidence in form and substance satisfactory to the Purchaser and its counsel that all Encumbrances (other than Permitted Encumbrances) affecting the Purchased Assets have been discharged in full, other than any Encumbrances which, pursuant to the terms of this Agreement, are not required to be discharged;
- (j) **Eastern Bank** The Vendor shall have arranged to purchase the assets listed on Schedule 2.1(b)II from Eastern Bank and directed on Closing the applicable portion of the Purchase Price be paid to Eastern Bank as outlined in Section 7.21.
- (k) **Non-Competition Agreement** Bess Eaton and Gencarelli shall have executed and delivered to the Purchaser a non-competition agreement in the form of the non-competition agreement annexed hereto as Schedule 8.1(k);
- (l) **Legal Opinion** The Vendor shall have delivered to the Purchaser an opinion of counsel to the Vendor, in form and substance reasonably satisfactory to the Purchaser;
- (m) **Wendy's Approval** The transactions contemplated by this Agreement shall have been approved by the Executive Committee and by the board of directors of Purchaser's indirect parent corporation, Wendy's International, Inc. as contemplated by Section 7.24;
- (n) **Non-Disturbance Agreements** The non-disturbance agreements contemplated under Section 7.10 shall have been obtained;

- (o) **Price Adjustments** The cumulative adjustments to the Purchase Price under Sections 7.4 and 7.5(c) shall not exceed \$1,000,000 in aggregate;
- (p) **Deliveries** The deliveries of the Vendor under Article 7 shall have been completed in accordance with the terms thereof;
- (q) **Post-Signing Schedules.** If any of the schedules provided by the Vendor to the Purchaser after execution of this Agreement is or are not satisfactory to the Purchaser, it may terminate this Agreement by written notice to the Vendor within seven days following receipt of such schedule(s).
- (r) **Bankruptcy Matters.**
  - (1) Each of the Bankruptcy Cases shall have been commenced not later than March 2, 2004.
  - (2) Each of the motion referred to in Section 7.1(b)(ii) relating to the Bidding Procedures Order and the motion referred to in Section 7.1(c) to obtain a date for a hearing by the Bankruptcy Court to approve the transactions contemplated by this Agreement shall have been filed not later than March 3, 2004.
  - (3) The Bidding Procedures Order shall have been entered by the Bankruptcy Court not later than March 15, 2004, shall not have been stayed, vacated, modified, reversed, or amended, and shall remain in full force and effect;
  - (4) The Approval Order shall have been entered by the Bankruptcy Court not later than May 3, 2004, shall not have been stayed, vacated, modified, reversed, or amended, and shall remain in full force and effect. Unless the Purchaser elects otherwise, the Approval Order shall not be subject to an appeal, and any time period for any party to file or lodge an appeal of the Approval Order shall have expired; and
  - (5) Not later than the entry of the Approval Order, an order shall have been entered in the Bankruptcy Case of Gencarelli, in form and substance satisfactory to the Purchaser, confirming the validity and effectiveness of each of the Gencarelli Guaranty and the Gencarelli Mortgage Guaranty and otherwise that each of the Gencarelli Guaranty and the Gencarelli Mortgage Guaranty is not subject to avoidance, and such order shall not have been stayed, vacated, modified, reversed, or amended, and shall remain in full force and effect. Unless the Purchaser elects otherwise, such order shall not be subject to an appeal, and any time period for any party to file or lodge an appeal of such order shall have expired.

**8.2 Non-Performance by Bess Eaton or Gencarelli.** If any of the conditions contained in Section 8.1 shall not be performed or fulfilled at or prior to the time indicated therefor in Section 8.1 (if applicable), or otherwise by May 17, 2004, in the opinion of the Purchaser, acting reasonably, the Purchaser may, by notice to Bess Eaton and Gencarelli, terminate this Agreement and the obligations of the Purchaser to complete the transactions contemplated by this Agreement, other than the obligations contained in Section 12.5 and under the Confidentiality Agreements referenced in Section 1.8, shall be terminated, provided that whether or not the Purchaser so terminates its obligations, the Purchaser may bring an action pursuant to Article 11 against Bess Eaton and Gencarelli for damages suffered by the Purchaser where the non-performance or non-fulfillment of the relevant condition is as a result of a breach of covenant, representation or warranty due to willful act or omission by the Vendor. Any such condition may be waived in whole or in part by the Purchaser without prejudice to any claims it may have for breach of covenant, representation or warranty.

**8.3 Conditions of Closing in Favor of Bess Eaton and Gencarelli.** The purchase and sale of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Bess Eaton and Gencarelli, to be performed or fulfilled at or prior to the Effective Time:

- (a) ***Representations and Warranties*** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects at the Effective Time with the same force and effect as if such representations and warranties were made at and as of such time, and a certificate of the President and the Chief Financial Officer of the Purchaser, dated the Closing Date, to that effect shall have been delivered to the Vendor, such certificate to be in form and substance satisfactory to the Vendor, acting reasonably and where such changes have caused the representations and warranties to be inaccurate in any respects, such certificate shall set out such changes;
- (b) ***Covenants*** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser at or before the Effective Time shall have been complied with or performed in all material respects, and a certificate of the President and the Chief Financial Officer of the Purchaser, dated the Closing Date, to that effect shall have been delivered to the Vendor, such certificate to be in form and substance satisfactory to the Vendor, acting reasonably;
- (c) ***Regulatory Consents*** There shall have been obtained from all appropriate federal, state, municipal or other governmental or administrative bodies such licenses, permits, consents, approvals, certificates, registrations and authorizations as are required to be obtained by the Purchaser to permit the change of ownership of the Purchased Assets contemplated hereby, including those described in Schedule 5.18A, in each case in form and substance satisfactory to the Vendor, acting reasonably;
- (d) ***Opinion*** The Purchaser shall have delivered to the Vendor an opinion of the Purchaser's counsel with respect to the transactions contemplated hereby, in form and substance reasonably satisfactory to the Vendor;

- (e) **No Action or Proceeding** No legal or regulatory action or proceeding shall be pending which would enjoin the transaction contemplated by this Agreement; and
- (f) **Price Adjustments** The cumulative adjustments to the Purchaser Price under Sections 7.4 and 7.5(c) (excluding amounts under 7.4(d) recoverable by Vendor under its title insurance coverage) shall not exceed \$1,000,000 in aggregate.
- (g) **Bankruptcy Court Approval.** The Approval Order shall have been entered by the Bankruptcy Court shall not have been stayed, vacated, modified, reversed, or amended, and shall remain in full force and effect.

**8.4 Non-Performance by the Purchaser.** If any of the conditions contained in Section 8.3 shall not be performed or fulfilled at or prior to May 31, 2004, to the satisfaction of the Vendor, acting reasonably, the Vendor may, by notice to the Purchaser, terminate this Agreement and the obligations of the Vendor, the Shareholder and the Purchaser under this Agreement, other than the obligations contained in Section 12.5 and under the Confidentiality Agreements referenced in Section 1.8, shall be terminated, provided that the Vendor may also bring an action pursuant to Article 11 against the Purchaser for damages suffered by them where the non-performance or non-fulfillment of the relevant condition is as a result of a breach of covenant, representation or warranty due to willful act or omission by the Purchaser. Any such condition may be waived in whole or in part by the Vendor without prejudice to any claims they may have for breach of covenant, representation or warranty.

## **9. CLOSING DATE AND TRANSFER OF POSSESSION**

**9.1 Transfer.** The transfer of possession of the Purchased Assets shall be deemed to take effect as at 12:01 A.M. on the Closing Date.

**9.2 Place of Closing.** The closing shall take place at the Effective Time at the offices of Edwards & Angell LLP, counsel to the Vendor, in Providence, Rhode Island.

**9.3 Further Assurances.** From time to time subsequent to the Closing Date, each party to this Agreement covenants and agrees that it will at all times after the Closing Date, at the expense of the requesting party, promptly execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

**9.4 Risk of Loss.** From the date hereof up to the Effective Time, the Purchased Assets shall be and remain at the risk of the Vendor. If, prior to the Effective Time, all or any part of the Purchased Assets which are necessary to carry on the Purchased Business as currently conducted are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated or seized by governmental or other lawful authority, unless the Purchaser terminates its obligations under this Agreement as contemplated by Section 8.1, the Purchaser shall complete the purchase without reduction of the Purchase Price, in which event all proceeds of insurance or compensation for expropriation or seizure shall be paid to the Purchaser at the Effective Time



and all right and claim of the Vendor to any such amounts not paid by the Closing Date shall be assigned at the Effective Time to the Purchaser.

## **10. SURVIVAL OF COVENANTS, REPRESENTATIONS AND WARRANTIES**

**10.1 Survival of Representations, Warranties and Covenants.** The representations and warranties contained in this Agreement and in all certificates and documents delivered pursuant to or contemplated by this Agreement, and those covenants which by their terms are required to be wholly performed at or prior to the Effective Time shall survive the closing of the transactions contemplated hereby and shall terminate at the expiration of two years following the Closing Date and, notwithstanding such closing nor any investigation made by or on behalf of the party entitled to the benefit thereof, shall continue in full force and effect for the benefit of the party entitled to the benefit thereof, except that:

- (a) the representations and warranties contained in Sections 5.1 ("Organization and Status"), 5.2 ("Corporate Power and Authorization"), and 5.3 ("No Other Agreements to Purchase"), and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 8.1(a) shall survive and continue in full force and effect without limitation of time;
- (b) the representations and warranties contained in Section 5.23 ("Taxes") and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 8.1(a) shall survive and continue in full force and effect until, but not beyond, 120 days following the expiration of the period, if any, during which an assessment, reassessment or other form of recognized document assessing liability for tax, interest or penalties under applicable tax legislation in respect of any taxation year to which such representations and warranties extend could be issued under such tax legislation to the Vendor, provided the Vendor did not file any waiver or other document extending such period;
- (c) a claim for any breach of any of the representations and warranties contained in this Agreement or in any agreement, instrument, certificate or other document executed or delivered pursuant hereto involving fraud or fraudulent misrepresentation may be made at any time following the Closing Date, subject only to applicable limitation periods imposed by law;
- (d) the representations and warranties contained in Sections 5.6. ("Title to Personal Property"), 5.9 ("Title to Real Property"), and 5.25 ("Environmental"), and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 8.1(a) shall survive and continue in full force and effect for a period of five years following the Closing Date;
- (e) no claim for breach of any other representation or warranty, or any covenant which by its terms is required to be wholly performed at or prior to the Effective Time shall be valid unless the party against whom such claim is made has been

given notice thereof before the expiry of such two-year or other applicable period, as the case may be; and

- (f) notwithstanding the foregoing, to the extent that any claim for indemnification in respect of any breach or alleged breach of any representation, warranty, or covenant has been made during the period in which such representation, warranty, or covenant survives and remains in effect as provided above, then such representation, warranty, or covenant shall survive beyond the applicable survival period specified above until the final resolution of such claim, but only for purposes of such claim.

All other covenants shall continue in full force and effect without limitation of time, unless otherwise provided therein.

## 11. INDEMNIFICATION

**11.1 Indemnification by Bess Eaton and Gencarelli.** Bess Eaton and Gencarelli, and each of them jointly and severally, agree to indemnify and save harmless the Purchaser, its directors, officers, employees and agents, from all Losses suffered or incurred by the Purchaser, its directors, officers, employees and agents, as a result of or arising directly or indirectly out of or in connection with:

- (a) any breach by Bess Eaton or Gencarelli of, or any inaccuracy of any representation or warranty of Bess Eaton or Gencarelli contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto;
- (b) any breach or non-performance by Bess Eaton or Gencarelli of any covenant to be performed by it which is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto;
- (c) the failure of Bess Eaton or Gencarelli to perform any of its obligations relating to or in respect of the Purchased Business not assumed by the Purchaser pursuant to this Agreement, or arising under contracts or other agreements assumed by the Purchaser pursuant to this Agreement but relating to or arising out of action or inaction of the Vendor and relating to events which occurred prior to the Closing Date;
- (d) any event occurring or any condition existing at or prior to the Effective Time relating to the Purchased Business, the Purchased Assets, the Leased Property or the Gencarelli Assets which now or hereafter constitutes a violation of, or gives rise to any liability or potential liability under, Environmental Laws;
- (e) any generation, manufacture, processing, distribution, use, presence, treatment, storage, disposal, discharge, transport or handling of any Hazardous Substance in, on, under or from any Leased Property or Gencarelli Assets, whether by the Vendor or any tenant or any other person prior to the Effective Time and whether or not known at the Effective Time;

- (f) any requirement imposed by a governmental authority to change, improve or modify the processes of the Purchased Business, the Purchased Assets, the Leased Property or the Gencarelli Assets or the manner in which the Purchased Business is conducted immediately prior to the Effective Time so as to bring the same into compliance with Environmental Laws;
- (g) any claim by or on behalf of any employee of Bess Eaton who is not required to be offered employment by the Purchaser pursuant to Section 7.13 or who does not accept the Purchaser's offer of employment;
- (h) the operations, actions, or omissions of Bess Eaton or Gencarelli up to the Effective Time (including without limitation any actual or alleged injury to any employee or other person) save and except for the Assumed Liabilities;
- (i) all product liability, product warranty and other claims and obligations respecting products manufactured or sold by Bess Eaton or services provided by Bess Eaton up to the Effective Time;
- (j) the Excluded Liabilities;
- (k) any and all liability (including attorneys' fees and other defense costs and any amounts payable in respect of any judgment or settlement) in respect of the pending proceedings relating to Terri Judd, Rose Marie Moreau, and Rosemary Colon; and
- (l) all claims, demands, costs and expenses, including interest at the Prime Rate and reasonable legal fees, in respect of the foregoing.

**11.2 Indemnification by the Purchaser.** The Purchaser agrees to indemnify and save harmless Bess Eaton, its directors, officers, employees and agents, and Gencarelli from all Losses suffered or incurred by Bess Eaton or Gencarelli as a result of or arising directly or indirectly out of or in connection with:

- (a) any breach by the Purchaser of or any inaccuracy of any representation or warranty contained in this Agreement or in any agreement, instrument, certificate or other document delivered pursuant hereto;
- (b) any breach or non-performance by the Purchaser of any covenant to be performed by it which is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto;
- (c) the operations of the Purchased Business, or the actions or omissions of the Purchaser, after the Effective Time, including, without limitation, any failure by the Purchaser to pay, satisfy, discharge, perform or fulfill any of the Assumed Liabilities; and
- (d) all claims, demands, costs and expenses, including interest at the Prime Rate and reasonable legal fees, in respect of the foregoing.

**11.3 Notice of Claim.** In the event that a party (the "Indemnified Party") shall become aware of any claim, proceeding or other matter (a "Claim") in respect of which another party (the "Indemnifying Party") agreed to indemnify the Indemnified Party pursuant to this Agreement, the Indemnified Party shall promptly give written notice thereof to the Indemnifying Party. Such notice shall specify whether the Claim arises as a result of a claim by a person against the Indemnified Party (a "Third Party Claim") or whether the Claim does not so arise (a "Direct Claim"), and shall also specify with reasonable particularity (to the extent that the information is readily available to the Indemnified Party), the factual basis for the Claim. If the Indemnified Party becomes aware of the Claim in time to permit the Indemnifying Party to effectively contest the determination of any liability susceptible of being contested but does not give the Indemnifying Party timely notice of such Claim, the Indemnifying Party shall be entitled to set off against the amount claimed by the Indemnified Party the amount by which any Losses incurred by the Indemnified Party would have been reduced had the Indemnified Party given such notice on a timely basis. Any failure to give, or delay in giving, notice of a Third Party Claim as required by this Section will not affect the Indemnifying Party's indemnification obligations with respect to such Claim except if, and only to the extent that, the Indemnified Party is actually prejudiced by such failure or delay.

**11.4 Direct Claims.** With respect to any Direct Claim, following receipt of notice from the Indemnified Party of the Claim, the Indemnifying Party shall have 60 days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnifying Party may reasonably request. If both parties agree at or prior to the expiration of such 60-day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed-upon amount of the Claim, failing which the matter shall be referred to binding arbitration in such manner as the parties may agree or shall be determined by a court of competent jurisdiction.

**11.5 Third Party Claims.** With respect to any Third Party Claim, the Indemnifying Party shall have the right, at its expense, to participate in or assume control of the negotiation, settlement or defense of the Claim and, in such event, the Indemnifying Party shall reimburse the Indemnified Party for all the Indemnified Party's reasonable out-of-pocket expenses (which shall not include overheads and employees salaries) as a result of such participation or assumption. If the Indemnifying Party elects to assume such control, the Indemnified Party shall have the right to participate in the negotiation, settlement or defense of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and the representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defenses). If the Indemnifying Party, having elected to assume such control, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control, and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. If any Third Party Claim is of a nature such that:

(a) the Indemnified Party is required by applicable law or the order of any court, tribunal or regulatory body having jurisdiction; or (b) it is necessary in the reasonable view of the Indemnified Party acting in good faith and in a manner consistent with reasonable commercial practices in respect of: (i) a Third Party Claim by a customer relating to products or services supplied by the Vendor; or (ii) a Third Party Claim relating to any Contract which is necessary to the operation of the Purchased Business or the Purchased Assets or any material part thereof in a manner in which the Purchased Business or Purchased Assets or any material part thereof would be operated by a reasonable and prudent operator, in order to avoid material damage to the relationship between the Indemnified Party and any of its major customers or to preserve the rights of the Indemnified Party under such an essential Contract, to make a payment to any Person (a "Third Party") with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, as the case may be, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party. If such payment, by resulting in settlement of the Third Party Claim, precludes a final determination of the merits of the Third Party Claim and the Indemnified Party and the Indemnifying Party are unable to agree whether such payment was reasonable in the circumstances having regard to the amount and merits of the Third Party Claim, such dispute shall be submitted to the Bankruptcy Court so long as the Bankruptcy Court has jurisdiction thereof. If the Bankruptcy Court no longer has jurisdiction, the dispute shall be submitted to arbitration. All such arbitrations shall be governed by the following rules:

- (a) the arbitration shall be administered in accordance with the commercial arbitration rules of the American Arbitration Association, as then in effect, and the internal laws of the Commonwealth of Massachusetts, without regard to its laws with respect to conflicts or choices of laws and shall be held in Boston, Massachusetts;
- (b) the party desiring such arbitration shall give written notice to that effect to the other party and, if within 10 days of such notice, the Indemnified Party and the Indemnifying Party have failed to agree on a single arbitrator, the American Arbitration Association shall appoint the arbitrator;
- (c) the arbitrator will be requested to hear the determine such matter in an expedited basis;
- (d) the arbitrator will not have any right, power or authority to award punitive or exemplary damages or other damages in excess of purely compensatory damages, but may in appropriate circumstances make a determination as to whether any party acted in bad faith in bringing or defending the underlying claim (a "Bad Faith Finding");

- (e) the determination of the arbitrator shall be conclusive and binding upon the parties and shall be deemed to form part of this Agreement. The arbitrator shall give written notice to the parties stating their determination and shall furnish to each party a copy of such determination signed by them;
- (f) in the event of the failure, refusal or inability of any arbitrator to act, a new arbitrator shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of the arbitrator so failing, refusing or unable to act;
- (g) the expenses of any arbitration shall be awarded by the arbitrator or arbitrators or, in the absence of such an award, shall be borne equally by the parties, and each of the parties shall bear all of its own expenses in connection with such arbitration; but if the Arbitrator makes a Bad Faith Finding with respect to a party, then the expenses of such arbitration, including reasonable attorneys' fees incurred by the other party in connection with such arbitration, shall be borne by the party against whom the Bad Faith Finding was made.
- (h) each party shall act in good faith and shall act diligently to proceed with and complete the arbitration proceedings.

**11.6 Settlement of Third Party Claims.** If the Indemnifying Party fails to assume control of the defense of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defense of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the liability of the Indemnifying Party shall be limited to the proposed settlement amount if any such consent is not obtained for any reason.

**11.7 Co-operation.** The Indemnified Party and the Indemnifying Party shall co-operate fully with each other with respect to Third Party Claims, and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available).

**11.8 Exclusivity.** The provisions of this Article 11 shall apply to any Claim for breach of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant to this Agreement (other than a claim for specific performance or injunctive relief) with the intent that all such Claims shall be subject to the limitations and other provisions contained in this Article 11.

**11.9 Taxes.** If the Vendor and the Purchaser, acting reasonably, determine that any payment (the "Payment") made pursuant to this Article 11 is subject to any tax, the Indemnifying Party agrees to pay to the Indemnified Party, in addition to the Payment, an amount equal to the tax payable in connection with such Payment and such additional amount.

**11.10 Adjustment to Purchase Price.** The parties agree that to the maximum extent lawfully permissible indemnification payments will be considered adjustments to the Bess Eaton Assets Purchase Price or the Gencarelli Assets Purchase Price, as applicable.

**11.11 Limitation on Obligation to Indemnify.**

- (a) In the event that the Vendor is required to indemnify and save harmless the Purchaser and its directors, officers, employees and agents pursuant to Section 11.1(a) in respect of any Loss suffered or incurred, the liability of the Vendor shall not arise until the aggregate of the Losses in respect of the claims for indemnity made by the Purchaser exceed \$50,000 and, in such event, the liability of the Vendor shall be for the aggregate of all Losses of the Purchaser theretofore or thereafter sustained up to an aggregate amount of \$4,000,000, excluding applicable interest.
- (b) In the event that the Purchaser is required to indemnify and save harmless the Vendor and its directors, officers, employees and agents pursuant to Section 11.2(a) in respect of any Loss suffered or incurred, the liability of the Purchaser shall not arise until the Losses in respect thereof exceed \$50,000 and, in such event, the liability of the Purchaser shall be for the aggregate of all such Losses up to an aggregate amount of \$4,000,000, excluding applicable interest.

**12. MISCELLANEOUS**

**12.1 Authority of the Vendor.** Bess Eaton and Gencarelli irrevocably appoint Gencarelli agent and attorney, to the extent permitted by the Bankruptcy Court, for the purpose of executing and delivering any amendment, waiver, notice, direction, receipt, certificate or other document or taking any other action required or permitted to be taken by or on behalf of the Vendor pursuant to this Agreement or in connection with the transactions contemplated hereby. Such appointment is coupled with an interest and is irrevocable. Any such amendment, waiver, notice, direction, receipt, certificate or other document or any such other action shall be deemed to have been effectively given or taken on behalf of Bess Eaton and Gencarelli and shall be binding upon each of them as if each of them had executed and delivered such document or taken such other action, as the case may be. The Purchaser shall have no duty to enquire into the validity of any document executed or other action taken by Gencarelli on behalf of Bess Eaton and Gencarelli pursuant to this Section 12.1.

**12.2 Notices.**

- (a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by telecopier or sent by registered mail, charges prepaid, addressed as follows:

if to Bess Eaton:

2 Kidds Way  
Westerly, Rhode Island

Attention: Louis A. Gencarelli, Sr.

Facsimile: (401) 596-0755

With a copy to:

Winograd, Shine and Zacks, P.C.  
123 Dyer Street  
Providence, RI 02903

Facsimile: (401) 272-5728

if to Gencarelli:

2 Kidds Way  
Westerly, Rhode Island

Facsimile: (401) 596-0755

with a copy to

Ferrucci Russo P.C.  
55 Pine Street  
Providence, RI 02903

Facsimile: (401) 455-7778

if to the Purchaser:

4150 Tuller Road  
Suite 236  
Dublin, Ohio 43017

Attention: Chris Laganos

Facsimile: 614-791-4235

with a copy to:

The TDL Group Corp.  
874 Sinclair Road  
Oakville, Ontario  
L6K 2Y1

Attention: General Counsel

Facsimile: 905-845-2931



- (b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day, on the next following business day) or, if mailed, on the third business day following the date of mailing.
- (c) Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 12.2.

**12.3 Commissions, etc.** It is understood and agreed that no broker, agent or other intermediary acted for the Vendor or the Purchaser in connection with the sale or purchase of the Purchased Assets and the Vendor agrees to indemnify and save harmless the Purchaser and the Purchaser agrees to indemnify and save harmless the Vendor from and against any claims whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the party providing such indemnity.

**12.4 Consultation.** The parties shall consult with each other before issuing any press release or making any other public announcement or announcement to Bess Eaton employees or stores with respect to this Agreement or the transactions contemplated hereby and, except as required by any applicable law or regulatory requirement, none of them shall issue any such press release or make any such announcement without the prior written consent of the others, which consent shall not be unreasonably withheld or delayed.

**12.5 Disclosure.** Prior to any public announcement or announcement to Bess Eaton employees or stores of the transaction contemplated hereby pursuant to Section 12.4, neither party shall disclose the existence or contents of this Agreement or any aspects of such transaction except to its board of directors, its senior management, its legal, accounting, financial or other professional advisors, any financial institution contacted by it with respect to any financing required in connection with such transaction and counsel to such institution (all of whom must first agree to abide by these obligations of non-disclosure), or as may be required by any applicable law or any regulatory authority or stock exchange having jurisdiction.

**12.6 Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective heirs, legal personal representatives, successors and permitted assigns. There are no third-party beneficiaries to this Agreement including without limitation the Employees and the obligees in respect of the Assumed Liabilities. Except as provided in this Section 12.6, neither party may assign any of its rights or obligations hereunder without the prior written consent of the other parties and any purported assignment of any rights or obligations hereunder in violation of this Section 12.6 is void. The Purchaser may, at any time prior to the Effective Time assign all of its rights and obligations under this Agreement to any Affiliate if the assignee delivers to the Vendor an instrument in writing executed by the assignee confirming that it is bound by and shall perform all of the obligations of the Purchaser under this Agreement as if it were an original signatory provided that no such assignment shall relieve the Purchaser of its obligations under this Agreement. In the event of an assignment by the Purchaser as set out above, any reference in this Agreement to the Purchaser shall be deemed to include the assignee.

After the Effective Time, the Purchaser may assign its rights and benefits under this Agreement to any person who purchases all or substantially all of the Purchased Business, without the consent of Bess Eaton and Gencarelli. No such assignment shall affect the Purchaser's obligations as set forth herein or under the Gencarelli Note.

**12.7 Amendment and Waivers.** No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided.

**12.8 Right of Set Off.** If, pursuant to this Agreement or any agreement entered into pursuant hereto, the Purchaser claims that Bess Eaton or Gencarelli owes any amount to the Purchaser under this Agreement or in connection with the transactions contemplated hereby, then without limiting or waiving in any respect any rights or remedies of the Purchaser given under this Agreement or now or hereafter existing at law or in equity or by statute,

- (a) unless Bess Eaton and Gencarelli dispute the Purchaser's claim, the amount of such claim may be set off against and applied to any sums of money or securities owed by the Purchaser to Bess Eaton and/or Gencarelli until such sums are completely set off; and
- (b) if Bess Eaton and Gencarelli dispute the Purchaser's claim, the parties agree to arbitrate such dispute in accordance with the arbitration process set out in Section 11.5 hereof (with the necessary changes required by context) and following a final determination such sums determined may then be set off against and shall apply to any sums of money or securities owed by the Purchaser or any assignee to Bess Eaton or Gencarelli until such sums are completely set off. Pending the resolution of any such dispute, if any amount that may be subject to set off is payable by the Purchaser to Bess Eaton or Gencarelli, then if requested by Bess Eaton and Gencarelli, the Purchaser will deposit such amount into escrow with a neutral third party, to be paid to Bess Eaton and Gencarelli or returned to the Purchaser (in each case, together with any interest or other earnings on such escrowed funds), as the case may be, upon resolution of the dispute.

**12.9 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement.

### **13. TERMINATION**

**13.1 By Agreement.** This Agreement may be terminated by written agreement of the Vendor and Tim Donut.

**13.2 By the Vendor for Breach.** This Agreement may be terminated by the Vendor if Tim Donut materially breaches any representation, warranty, covenant, or other agreement set forth herein and such breach either (i) is not susceptible to cure or (ii) if susceptible to cure is not cured within ten business days following specific written notice thereof from the Vendor to Tim Donut.

**13.3 By Tim Donut for Breach.** This Agreement may be terminated by Tim Donut if the Vendor materially breaches any representation, warranty, covenant, or other agreement set forth herein and such breach either (i) is not susceptible to cure or (ii) if susceptible to cure is not cured within ten business days following specific written notice thereof from Tim Donut to the Vendor.

**13.4 By the Vendor for Failure of Conditions.** This Agreement may be terminated by the Vendor as provided in Section 8.4.

**13.5 By Tim Donut for Failure of Conditions.** This Agreement may be terminated by Tim Donut as provided in Section 8.2. This Agreement also may be terminated by Tim Donut if any condition set forth in Section 8.1(r) ("Bankruptcy Matters") is not satisfied by the date set forth or referred to therein.

**13.6 By Either Party after Drop-Dead Date.** This Agreement may be terminated by (i) the Vendor if the Closing has not occurred by May 31, 2004 (other than as a direct result of a material breach of this Agreement by the Vendor) or (ii) the Purchaser if the Closing has not occurred by May 17, 2004 (other than as a direct result of a material breach of this Agreement by the Purchaser).

**13.7 By Either Party on Consummation of Competing Bid.** This Agreement may be terminated by either the Vendor or Tim Donut upon the consummation of a purchase of the Purchased Assets or a material portion thereof pursuant to a competing bid approved by the Bankruptcy Court in accordance with the Bidding Procedures Order.

**13.8 Effect of Termination.** Termination of this Agreement shall not affect the rights or obligations of any party hereunder in respect of any breach of this Agreement occurring prior to such termination or in respect of any Break-Up Fee that may be or become payable to the Purchaser.

*[The rest of this page is intentionally left blank.]*

IN WITNESS WHEREOF this Agreement has been executed by the parties as an agreement under seal.

**BESS EATON DONUT FLOUR CO., INC.**

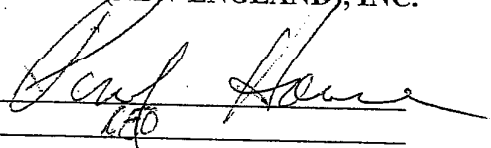
By: \_\_\_\_\_  
Its: \_\_\_\_\_

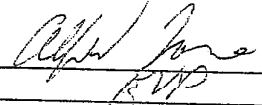
Witnessed by:

\_\_\_\_\_

\_\_\_\_\_  
**LOUIS A. GENCARELLI, SR.**

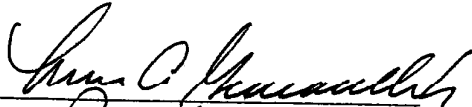
**TIM HORTONS (NEW ENGLAND), INC.**

By:   
Its: LAO

By:   
Its: BJP

IN WITNESS WHEREOF this Agreement has been executed by the parties as an agreement under seal.

BESS EATON DONUT FLOUR CO., INC.

By:   
Its: President

Witnessed by:

Karen C. Gawn

  
LOUIS A. GENCARELLI, SR.

TIM HORTONS (NEW ENGLAND), INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_



SCHEDULE 1.1(a)  
AUDITED FINANCIAL STATEMENTS

**BESS EATON DONUT FLOUR CO., INC.**

Financial Statements

December 24, 2002 and December 25, 2001

(With Independent Auditors' Report Thereon)

**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

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600 Fleet Center  
50 Kennedy Plaza  
Providence, RI 02903-2321

## Independent Auditors' Report

The Stockholder  
Bess Eaton Donut Flour Co., Inc.:

We have audited the accompanying balance sheets of Bess Eaton Donut Flour Co., Inc. as of December 24, 2002 and December 25, 2001 (as restated) and the related statements of operations, stockholder's equity (deficit), and cash flows for the fiscal years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Bess Eaton Donut Flour Co., Inc. at December 24, 2002 and December 25, 2001, and the results of its operations and its cash flows for the fiscal years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in note 1 to the accompanying financial statements, the balance sheet as of December 25, 2001 and the related statements of operations, stockholder's equity and cash flows for the fiscal year then ended have been restated.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in note 1 to the financial statements, the Company has suffered recurring losses from operations, has a stockholder's deficit, has a working capital deficit, and is in violation of certain debt covenants that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

KPMG LLP

August 14, 2003



KPMG LLP, KPMG LLP, a U.S. member firm of the KPMG network,  
a member of KPMG International, a Swiss association.



# **BESS EATON DONUT FLOUR CO., INC.**

## **Balance Sheets**

December 24, 2002 and December 25, 2001

Assets (Note 4)	2002	2001 (as restated)
Current assets:		
Cash	\$ 83,889	92,576
Accounts receivable, less allowance for doubtful accounts of \$0 in 2002 and \$5,000 in 2001 (note 10)	309,395	47,029
Inventories (note 2)	687,988	620,337
Prepaid expenses	71,665	77,254
Notes receivable (note 10)	6,981	11,772
Total current assets	<u>1,159,918</u>	<u>848,968</u>
Property and equipment, net of accumulated depreciation and amortization (note 3)	<u>10,001,829</u>	<u>10,301,499</u>
Other assets:		
Note receivable (note 10)	213,104	366,058
Financing costs (note 4)	259,361	338,740
Deposits	11,500	11,500
	<u>\$ 11,645,712</u>	<u>11,866,765</u>
<b>Liabilities and Stockholder's Equity (Deficit)</b>		
Current liabilities:		
Current maturities of long-term debt (note 4)	\$ 7,993,408	1,007,345
Accounts payable	2,929,462	2,434,174
Accrued wages and other current liabilities	864,189	922,092
Total current liabilities	<u>11,787,059</u>	<u>4,363,611</u>
Long-term debt, excluding current maturities (note 4)	<u>1,411,689</u>	<u>7,180,604</u>
Total liabilities	13,198,748	11,544,215
Stockholder's equity (deficit)	(1,553,036)	322,550
Commitments and contingencies (notes 4, 5, 7, 9 and 11)		
	<u>\$ 11,645,712</u>	<u>11,866,765</u>

See accompanying notes to financial statements.

# BESS EATON DONUT FLOUR CO., INC.

## Statements of Operations

Fiscal years ended December 24, 2002 and December 25, 2001

	2002	2001 (as restated)
Net sales	\$ 32,779,272	32,209,371
Cost of sales	27,242,591	25,997,154
Gross profit	5,536,681	6,212,217
Marketing, general, and administrative expenses	5,242,047	4,541,612
Operating income before depreciation and amortization	294,634	1,670,605
Depreciation and amortization	1,924,804	1,669,284
Operating income (loss)	(1,630,170)	1,321
Other income	104,645	79,544
Gain (loss) on disposal of property and equipment (note 10)	(103,133)	56,010
Interest expense, net of interest income	(749,103)	(754,792)
Loss before income taxes	(2,377,761)	(617,917)
Income taxes (note 6)	—	13,905
Net loss	\$ (2,377,761)	(631,822)

See accompanying notes to financial statements.

**BESS EATON DONUT FLOUR, CO., INC.**

Statements of Stockholder's Equity (Deficit)

Fiscal years ended December 24, 2002 and December 25, 2001

	<b>Common stock</b>		<b>Additional paid-in capital</b>	<b>Retained earnings (accumulated deficit)</b>	<b>Total</b>
	<b>Class A</b>	<b>Class B</b>			
Balances, December 26, 2000 (as restated)	\$ 5,269	26,345	189,079	735,536	956,229
Stockholder distributions	—	—	—	(1,857)	(1,857)
Net loss (as restated)	—	—	—	(631,822)	(631,822)
Balances, December 25, 2001 (as restated)	5,269	26,345	189,079	101,857	322,550
Stockholder distributions	—	—	—	(264,255)	(264,255)
Stockholder contributions	—	—	766,430	—	766,430
Net loss	—	—	—	(2,377,761)	(2,377,761)
Balances, December 24, 2002	\$ <u>5,269</u>	<u>26,345</u>	<u>955,509</u>	<u>(2,540,159)</u>	<u>(1,553,036)</u>

See accompanying notes to financial statements.

**BESS EATON DONUT FLOUR CO., INC.**

Statements of Cash Flows

Fiscal years ended December 24, 2002 and December 25, 2001

	<u>2002</u>	<u>2001</u> (as restated)
Cash flows from operating activities:		
Net loss	\$ (2,377,761)	(631,822)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,924,804	1,669,284
Loss (gain) on disposal of property and equipment	103,133	(56,010)
Changes in operating assets and liabilities:		
Accounts receivable	(262,366)	54,588
Inventories	(67,651)	(10,574)
Prepaid expenses	5,589	154,347
Other assets	—	(2,705)
Accounts payable	495,288	(749,705)
Accrued wages and other current liabilities	(57,903)	112,533
Net cash provided by (used in) operating activities	<u>(236,867)</u>	<u>539,936</u>
Cash flows from investing activities:		
Purchases of property and equipment	(1,795,312)	(1,180,368)
Proceeds from sale of property and equipment	265,066	148,205
Net cash used in investing activities	<u>(1,530,246)</u>	<u>(1,032,163)</u>
Cash flows from financing activities:		
Principal payments on capital lease obligations and long-term debt	(1,214,183)	(1,671,173)
Proceeds from long-term debt	2,431,331	2,198,690
Payments received on notes receivable	157,745	7,955
Financing costs	(118,642)	(176,382)
Stockholder contributions	766,430	—
Stockholder distributions	(264,255)	(1,857)
Net cash provided by financing activities	<u>1,758,426</u>	<u>357,233</u>
Decrease in cash	<u>(8,687)</u>	<u>(134,994)</u>
Cash, beginning of year	92,576	227,570
Cash, end of year	\$ <u>83,889</u>	<u>92,576</u>

See accompanying notes to financial statements.

**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

**(1) Description of Business and Summary of Significant Accounting Policies**

**(a) Description of Business and Basis of Presentation**

Bess Eaton Donut Flour Co., Inc. (the Company) is engaged in the production and retail and wholesale sale of baked goods, coffee, and related drink products in the southern New England market. At December 24, 2002, the Company operates 48 retail stores, all of which are leased.

The Company's capital stock consists of: Class A common, \$1.00 par value, authorized 6,000 shares, issued 5,269 shares; and Class B common, \$1.00 stated value, authorized 30,000 shares, issued 26,345 shares.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As shown in the financial statements, the Company incurred a loss of \$2,377,761 for the year ended December 24, 2002, has a stockholder deficit of \$1,553,036 at December 24, 2002, and has a working capital deficit of \$10,627,141. The Company was in violation of certain debt covenants at December 24, 2002, and remains in violation. The Company is currently negotiating to either obtain waivers or refinance its debt. The Company is considering plans to reduce costs and increase profitability, including the closure of the baking facility discussed in note 12. Management is of the opinion that the Company will continue to meet its obligations and continue as a going concern.

**(b) Property and Equipment**

Property and equipment are stated at cost. When the Company opens a new store, the Company capitalizes the cost of acquiring the assets and readying them for their intended use. The Company provides for depreciation and amortization of property and equipment based on the estimated useful lives using the straight-line method.

**(c) Income Taxes**

The Company is a subchapter S Corporation. Accordingly, the Company's income is taxed at the stockholder level, except for certain state income taxes which are included in marketing, general, and administrative expenses.

**(d) Inventories**

Inventories are stated at the lower of cost, determined by the first-in, first-out (FIFO) method, or market.

**(e) Fiscal Year**

The Company's 2002 and 2001 fiscal years are 52 week periods.

**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

**(f) Use of Estimates**

Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities, and the disclosure of contingent assets and liabilities to prepare these financial statements in conformity with accounting principles generally accepted in the United States of America. Actual results could differ from these estimates.

**(g) Revenue Recognition**

The Company recognizes revenue from retail sales at the time the merchandise is sold to the customer. The Company recognizes revenue from wholesale sales at the time of shipment.

**(h) Financing Costs**

The Company capitalizes financing costs and amortizes these costs over the term of the related debt.

**(i) Restatements**

In fiscal 2002, the Company identified certain costs that were capitalized to property and equipment but should have been expensed in fiscal 2001 and prior years. Accordingly, the Company has restated its financial statements as of and for the year ended December 25, 2001. The restated financial statements reflect the following adjustments for the fiscal year ended December 25, 2001:

- An increase to salary expense of \$785,364.
- A decrease in depreciation and amortization of \$95,947.

As a result of other adjustments unrelated to the capitalization of costs, the Company has recorded an increase to other marketing, general, and administrative expenses of \$21,900 and an increase to cost of sales of \$30,000 for the fiscal year ended December 25, 2001.

# BESS EATON DONUT FLOUR CO., INC.

## Notes to Financial Statements

December 24, 2002 and December 25, 2001

The net result of these adjustments is to decrease 2001 net income from \$109,495 to a net loss of \$(631,822). The impact of the adjustments for fiscal years prior to 2001 is to decrease retained earnings by \$1,174,015 as of the beginning of fiscal 2001. Certain other 2001 balances have been reclassified for the restated presentation. The financial statements as of and for the fiscal year ended December 25, 2001 have been restated to include the effects of the corrections, as follows:

	As of and for the fiscal year ended December 25, 2001	
	Restated	As previously reported
<b>Statement of Operations:</b>		
Cost of sales	\$ 25,997,154	25,967,154
Gross profit	6,212,217	6,242,217
Marketing, general, and administrative expenses	4,541,612	3,753,024
Operating income before depreciation and amortization	1,670,605	2,489,193
Depreciation and amortization	1,669,284	1,765,231
Operating income	1,321	723,962
Income (loss) before income taxes	(617,917)	109,495
Income taxes	13,905	—
Net income (loss)	(631,822)	109,495
<b>Balance Sheet:</b>		
Property and equipment, net of accumulated depreciation and amortization	10,301,499	12,164,931
Total assets	11,866,765	13,730,197
Accounts payable	2,434,174	2,404,174
Accrued wages and other current liabilities	922,092	900,192
Total current liabilities	4,363,611	4,311,711
Total liabilities	11,544,215	11,492,315
Stockholder's equity	322,550	2,237,882
Total liabilities and stockholder's equity	11,866,765	13,730,197
<b>Statement of Cash Flows:</b>		
Net income (loss)	(631,822)	109,495
Depreciation and amortization	1,669,284	1,765,231
Change in accounts payable	(749,705)	(779,705)
Change in accrued wages and other current liabilities	112,533	90,633
Net cash provided by operating activities	539,936	1,325,300
Purchases of property and equipment	(1,180,368)	(1,965,732)
Net cash used in investing activities	\$ (1,032,163)	(1,817,527)

**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

**(2) Inventories**

Inventories consist of the following:

	<u>2002</u>	<u>2001</u>
Baking materials	\$ 152,732	142,352
Drinks	184,930	141,784
Sandwiches	24,285	14,050
Resale items	94,670	100,511
Other baked goods	30,001	22,061
Paper and supplies	126,124	127,482
Store supplies	10,780	10,908
Utensils and equipment	14,468	16,647
Spare parts	49,998	44,542
	<u>\$ 687,988</u>	<u>620,337</u>

**(3) Property and Equipment**

Property and equipment consists of the following:

	<u>2002</u>	<u>2001</u>
		(as restated)
Land	\$ 207,411	267,966
Buildings	2,616,069	2,614,818
Machinery and equipment	8,098,344	7,806,717
Furniture and fixtures	1,743,333	2,032,116
Vehicles	25,971	25,971
Leasehold improvements	8,701,297	7,296,848
Land improvements	457,239	481,581
Land lease rights	145,000	145,000
Construction in progress	166,121	587,036
	<u>22,160,785</u>	<u>21,258,053</u>
Less accumulated depreciation and amortization	<u>12,158,956</u>	<u>10,956,554</u>
	<u>\$ 10,001,829</u>	<u>10,301,499</u>



**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

**(4) Long-Term Debt**

Long-term debt obligations at December 24, 2002 and December 25, 2001 are summarized as follows:

	<u>2002</u>	<u>2001</u>
Note payable to a bank, due in monthly installments of \$17,356 in principal and interest at 9.75% for the next twelve months, and in varying monthly installments with interest of prime plus 1.25% through August 2017, secured by first mortgages on real estate and collateral assignment of leases and rents on real estate, refinanced in 2002	\$ —	1,683,461
Note payable to a bank, due in monthly installments of \$4,808 in principal and interest of 9.25% for the next twelve months, and in varying monthly installments with interest of prime plus 0.75% through August 2018, secured by first mortgages on real estate and collateral assignment of leases and rents on real estate, refinanced in 2002	—	489,324
Term note payable to a supplier due in varying monthly installments of principal and interest through 2007	1,036,700	1,390,884
Note payable to a bank, due in monthly installments of \$12,244 in principal and interest at 8.14% through May 2009	732,485	—
Note payable to a bank, due in monthly installments of \$6,925 in principal and interest at 8.14% through December 2009	445,317	—
Note payable to a bank, due in monthly installments of \$10,702 in principal and interest at prime plus 1.25% through March 2032 (interest rate is 6.0% at December 24, 2002)	1,768,684	—
Note payable to a bank, due in monthly installments of \$5,122 in principal and interest at prime plus 1.25% through March 2022 (interest rate is 6.0% at December 24, 2002)	700,791	—
Note payable to a leasing company, due in monthly installments of \$1,987 in principal and interest at 8.25% through April 2007	90,584	—
Note payable to a leasing company, due in monthly installments of \$3,077 in principal and interest at 8.5% through August 2003	22,332	61,074
Note payable to a mortgage company, due in monthly installments of \$12,023 in principal and interest at 12.38% through May 2006 with the balance due in June 2006	641,875	702,480
Term note payable to the owner, due in varying installments of principal only through December 2003	111,759	—

**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

	<u>2002</u>	<u>2001</u>
Note payable to a related party, paid in full in 2003	\$ 148,970	—
Note payable to a bank, due in month installments of \$57,983 in principal and interest at 7.9375% through September 2008	3,203,659	3,626,673
Note payable to a bank, due in monthly installments of \$7,206 in principal and interest at 8.0% through December 2008	410,831	58,236
Term note payable to the owner due in monthly installments of \$713 in principal and interest at \$8.375% through July 2003	6,193	12,032
Term note payable to a supplier due in monthly installments of \$10,487 in principal and interest at 7.5% through December 2003	81,584	159,202
Term note payable to a supplier due in monthly installments of \$104 in principal and interest through August 2005	<u>3,333</u>	<u>4,583</u>
Total long-term debt	9,405,097	8,187,949
Less current maturities of long-term debt	<u>7,993,408</u>	<u>1,007,345</u>
Total long-term debt, excluding current liabilities	\$ <u><u>1,411,689</u></u>	\$ <u><u>7,180,604</u></u>

The aggregate maturities of long-term debt for each of the next five fiscal years and thereafter are as follows:

2003	\$ 7,993,408
2004	372,725
2005	383,967
2006	641,776
2007	13,221
Thereafter	<u>—</u>
	\$ <u><u>9,405,097</u></u>

The Company is in violation of certain financial covenants with two of its lenders. Because these violations entitle the lenders to call the loans, the loans have been classified as current. See note 1(a).

**(5) Lease Commitments**

The Company leases most of its retail store properties under operating leases with terms from five to twenty years, and most have renewal options. The majority of the retail store properties are leased from related parties. Most leases require the Company to pay insurance, real estate taxes, and other operating expenses.

# **BESS EATON DONUT FLOUR CO., INC.**

## **Notes to Financial Statements**

December 24, 2002 and December 25, 2001

Total rent expense, including contingent rentals, was as follows for fiscal 2002 and 2001:

	<u>2002</u>	<u>2001</u>
Leases with related parties	\$ 2,961,574	3,102,381
Leases with unrelated parties	945,692	836,990
	<u>\$ 3,907,266</u>	<u>3,939,371</u>

Minimum lease payments under noncancelable operating leases at December 24, 2002, are as follows:

	<u>Unrelated parties</u>	<u>Related parties</u>	<u>Total</u>
2003	\$ 638,525	2,277,459	2,915,984
2004	639,937	2,277,459	2,917,396
2005	599,569	2,277,459	2,877,028
2006	541,686	2,277,459	2,819,145
2007	409,116	2,213,276	2,622,392
Thereafter	2,879,641	27,208,678	30,088,319
Total minimum lease payments	<u>\$ 5,708,474</u>	<u>38,531,790</u>	<u>44,240,264</u>

### **(6) Income Taxes**

In September 1998, the Company changed its corporate status from a C Corporation to a Subchapter S Corporation. As such, there are no deferred taxes or income tax expense for the fiscal years ended December 24, 2002 and December 25, 2001, except as discussed below.

The Company will be subject to a tax on the excess of the fair market value of assets over their tax basis on September 1, 1998 to the extent these gains are realized within 10 years of the Company's effective date of adoption of S Corporation status and the Company has taxable income in the year these gains are realized. A deferred tax liability was not recorded on the effective date of the S Corporation election as the Company's tax strategy was, and still is, not to sell any asset which would cause the imposition of a built-in gains tax.

During 2001, the Company completed its examination by the Internal Revenue Service for the tax years 1997 and 1998. The Company incurred additional taxes resulting from the audit of \$13,905 and interest of \$4,771.

### **(7) Employee Benefit Plan**

The Company maintains a profit sharing and salary savings plan for its employees pursuant to Section 401(k) of the Internal Revenue Code. The Plan allows employees to defer a portion of their compensation on a tax-deferred basis. Company matching contributions, which are charged to expense, were \$28,961 in 2002 and \$25,428 in 2001.

**BESS EATON DONUT FLOUR CO., INC.**

Notes to Financial Statements

December 24, 2002 and December 25, 2001

**(8) Supplemental Cash Flow Information**

Interest paid was \$649,029 in 2002 and \$686,579 in 2001.

**(9) Commitments and Contingencies**

The Company has an agreement with a supplier of drink products to purchase a minimum quantity of product through October 31, 2007 at the market price then in effect. The quantities contracted are equivalent to historical usage.

**(10) Related Party Transactions**

During 2001, the Company sold one of its retail properties to the owner of the Company. The sale price was \$525,000, which was considered to be the fair value of the property. The Company realized a gain of \$73,958 on the transaction. Consideration was paid through a \$381,935 note to the Company, and the assumption of the mortgage payable of \$143,065. The note bears interest of 5.8%, and is payable in monthly installments of principal and interest of \$2,692 through June 2021. *-) in Lee before  
for any situation  
per Jessica DeKorini  
Jan 12/04*

During 2002, the Company sold assets to the owner of the Company at book value of \$185,064 and no gain or loss was recognized on the transaction.

At December 24, 2002, the Company was due \$141,132 from a related party which is the net of rental payments due to the Company and severance payments due to the related party. The amount was paid in 2003.

At December 24, 2002, the Company was due \$75,000 from the owner. The amount was paid in 2003.

**(11) Pending Litigation**

A lawsuit for breach of contract and other charges was brought against the Company by a former officer in April 2003. Working with its insurance company and legal counsel, the Company is defending itself against these claims, and has also filed a countersuit against the plaintiff. At the present time, the outcome of the litigation is unknown; thus, no amount has been recorded by the Company regarding this litigation.

**(12) Facility Closure**

During 2003 the Company closed its baking facility, which is owned by the Company. The baking facility supplied the Company and various wholesalers with fresh baked donuts, muffins and bagels. The products previously produced at the baking facility will be outsourced to various vendors.

Schedule 1.7  
Transactions Out of Ordinary Course

Since 12/31/01:

- Delayed payment to trade creditors
- Introduced a hot, fresh product program
- Effective December 2003, contracted store distribution with Perkins
- Closed central commissary and introduced frozen products
- Sold and closed several stores
- Laid off employees
- Became involved in litigation with George Cioe, former President and CEO
- Reduced the Board of Directors
- Store 949 (Mystic, CT) was destroyed in a fire
- Discontinued the sale of newspapers and cigarettes
- Engaged a turnaround management consulting firm
- Met with 30 largest creditors in order to obtain a moratorium on past due obligations as well as support for a plan to sell the business
- Engaged a real estate broker to identify buyer(s) for its commissary, commissary equipment and office building

## SCHEDULE "2.1(a)"

### Bess Eaton Leased Property

**Municipal Address:**

2174 Plainfield Pike, Cranston, R.I.

**Landlord:**

Alwoodley Realty, LLC

**Tenant:**

Louis A. Gencarelli, Sr.

**Date of Lease:**

March 18, 1998

**Current Annual Rent:**

\$41,400.00

**Expiry Date:**

June 16, 2018

**Term:**

20 years

**Renewals:**

2 terms of 5 years

**Legal Description:**

Parcel I

That certain tract of land with all buildings and improvements thereon situated on the southerly side of the Plainfield Pike, in the City of Cranston, County of Providence, and State of Rhode Island, bounded and described as follows:

Beginning at the northeasterly corner of the tract of land hereby conveyed, said point being in the southerly line of said Plainfield Pike and is at the northwesterly corner of land now or lately of Joseph Ianelli; from thence running southerly, bounded easterly by said Ianelli land, for a distance of one hundred (100) feet to a point; thence, turning an interior angle of 70° and running westerly, bounded southerly by other land of this grantor, for a distance of two hundred fourteen and 5/10 (214.5) feet to land now or lately of Alfred Cardillo; thence turning an interior angle of 110° and running northerly, bounded westerly by said Alfred Cardillo land 100 (one hundred) feet to the Plainfield Pike; and thence turning an interior angle of 70° and running easterly, bounded northerly by said Plainfield Pike, two hundred fourteen and 5/10 (214.5) feet to the point and place of beginning, and this last mentioned line forming an interior angle of 110° with the first mentioned line.

Parcel II

Beginning at a point in the southeasterly corner of Parcel I and continuing the easterly line of said parcel a further distance of seventy-five (75) feet; thence turning an interior angle of 70° running westerly two hundred, fourteen and 5/10 (214.5) feet to a point; which point is the southwest corner of the within parcel; thence turning an interior angle of 110° and running a distance of seventy-five (75) feet; thence turning an interior angle of 70° and running easterly along the southerly line of Parcel I a distance of two hundred, fourteen and 5/10 (214.5) feet to the point or place of beginning. Meaning and intending to convey a parcel seventy-five feet by two hundred, fourteen

and 5/10 feet immediately adjacent to the southerly line of Parcel I.

**Municipal Address:** 499 Main Road, Tiverton, RI  
**Landlord:** Millicent Duggan  
**Tenant:** Louis A. Gencarelli, Sr.  
**Date of Lease:** September 28, 1990  
**Current Annual Rent:** \$25,920.00  
**Expiry Date:** September 30, 2010  
**Term:** 20 years  
**Renewals:** 2 terms of 10 years  
**Legal Description:** [To be provided by Vendor]

**Municipal Address:** 92 Boston Post Road, Waterford, CT  
**Landlord:** Christ and Despina Matsas  
**Tenant:** Louis A. Gencarelli, Sr.  
**Date of Lease:** June 1997 (undated)  
**Current Annual Rent:** \$52,800.00  
**Expiry Date:** November 30, 2007  
**Term:** 10 years  
**Renewals:** 1 term of 10 years  
**Legal Description:** That certain piece or parcel of land, with the building thereon standing, situated in the Town of Waterford, County of New London and State of Connecticut, more particularly bounded and described as follows:  
Beginning at the northwesterly corner of land now or formerly of Hedden Realty, Inc., which point is in the southerly line of Boston Post Road and one and 97/100 (1.97) feet westerly from a Connecticut Highway Bound and which point is also approximately three hundred twenty (320) feet westerly from Willetts Avenue and running S 8° 36' 50" W bounding easterly on said land now or formerly of Hedden Realty, Inc., and on land now or formerly of Hedden Realty, Inc. and on land now or formerly of Joseph Casimono one hundred ninety-four and 96/100 (194.96) feet to the northeasterly corner of land now or formerly of George & Grace D. Wanat; thence turning an interior angle of 93° 37' 30" and running N 85° 00' 40" W bounding southerly on said land now or formerly of George & Grace D. Wanat one hundred seventy-one and 25/100 (171.25) feet to the southeasterly corner of land now or formerly of Fletcher & Edythe Don Brosky; thence turning an interior angle of 83°-10'-30" and running N 11° 48' 50" E bounding westerly on said land now or formerly of Fletcher & Edythe Don Brosky two hundred twenty-one and 55/100 (221.55) feet to the southerly line of Boston Post Road; thence turning an interior angle of 87° 38' 50" and running S 75° 50' E bounding northerly on Boston Post Road one hundred fifty-nine and 29/100

(159.29) feet to the point of beginning, making an interior angle of 95° 33' 10" with the first-described course. Contains 34,290 square feet of land. Being the same premises conveyed to Barbara S. Browne by warranty deed of Neil P. Jorgensen and Roswitha Jorgensen, dated August 15, 1978 and recorded in Volume 246, Page 144 of the Waterford Land Records. Excepting therefrom a parcel containing 0.03 of an acre, more or less, lying along the northerly boundary of said premises, bounded and described as follows:

Northerly: by Route U.S. 1, 159.29 feet;  
 Easterly: by land now or formerly of Richard G. Hedden, 9 feet, more or less;  
 Southerly: by remaining land of Barbara S. Browne, 160 feet, more or less, by a line designated "Taking Line", as shown on the map hereinafter referred to;  
 Westerly: by land now or formerly of Edythe Don Brosky, 5 feet more or less.

For a more particular description of the above-described premises, reference is made to a map to be filed in the Waterford Town Clerk's Office, entitled: "Town of Waterford, Map Showing Land Acquired from Barbara S. Browne by The State of Connecticut, Improvements on U.S. 1, Scale 1" = 40', August 1984, Robert W. Gubala, Transportation Chief Engineer - Bureau of Highways." Town No. 152, Project No. 106, Serial No. 7, Sheet 1 of 1 Sheet.

**Municipal Address:**

**Landlord:**

**Tenant:**

**Date of Lease:**

**Current Annual Rent:**

**Expiry Date:**

**Term:**

**Renewals:**

**Legal Description:**

752 East Main Street, Meriden, CT

Maureen A. Hazard and Robert L. Hazard  
 Bess Eaton Donut Flour Co., Inc.

January 10, 1985

\$28,800.00

January 7<sup>th</sup> 2005

20 years

4 terms of 5 years

Legally described as a certain piece or parcel of land, together with all the buildings and improvements thereon, situated in the City of Meriden, County of New Haven and State of Connecticut, known as No. 15 Williams Street and No. 752 East Main Street, and shown as premises N/F Maureen A. Barry and N/F Robert J. Barry on a certain map entitled "Map showing property of Maureen A. Hazard, A.K.A. Maureen A. Barry & Robert J. Barry East Main Street & Williams Street Meriden - Connecticut Scale: 1" = 20.0' Date: 1/14/1978", certified substantially correct by Leon J. Kwiatkowski, which map is on file in the Office of the Meriden City Clerk and to which reference may be had. Said premises are more particularly bounded



and described as follows: Northerly: by land now or formerly of Anthony Bykowski, as shown on said map, a distance of 152.86 feet, more or less; Easterly: by other land of Robert James Barry, as shown on said map, a distance of 43.47 feet, more or less; Northerly: again by land now or formerly of Maureen A. Hazard, as shown on said map, a distance of 29.46 feet, more or less; Easterly: by land now or formerly of Maureen A. Hazard, as shown on said map, a distance of 74.58 feet, more or less; Southerly: on East Main Street, as shown on said map, a distance of 121.23 feet, more or less; and Westerly on Williams Street, as shown on said map, a distance of 132.50 feet, more or less. Said premises are leased subject to the encumbrances set forth on Schedule "A" of the Lease Agreement.

**Municipal Address:**

**Landlord:**

**Tenant:**

**Date of Lease:**

**Current Annual Rent:**

**Expiry Date:**

**Term:**

**Renewals:**

**Legal Description:**

24 East Main Street, Mystic, CT

Moogie, LLC

Bess Eaton Donut Flour Co., Inc.

August 6, 1999

\$80,400.00

August 31, 2019

20 years

None

A certain tract or parcel of land, together with the buildings thereon, situated in the Town of Stonington, County of New London and State of Connecticut, bounded and described as follows:

**Tract 1**

Situated in the Village of Mystic, beginning at a brass pin set in the ground at the intersection of the southerly side of East Main Street with the westerly side of Willow Street; thence running southerly by and along the westerly side of Willow Street one hundred eleven and seventy-five one hundredths (111.75) feet to and iron marker at the southeast corner of the within-conveyed premises; thence turning an interior angle of 97° 18' and running westerly and by and along lands now or formerly of Napoleon and Blanche Goyette eighty-six and nine tenths (86.9) feet to an iron marker at the southwest corner of the within conveyed premises; thence turning an interior angle of 93° 47' and running northerly by and along other lands of said Goyettes one hundred six and six tenths (106.6) feet to East Main Street; thence running easterly by and along the southerly side of East Main Street one hundred eight and twenty-five one hundredths (108.25) feet to the point and place of beginning.

**Municipal Address:** 455 Colman Street, New London, CT  
**Landlord:** Martin J. Sullivan  
**Tenant:** Bess Eaton Donut Company, Incorporated  
**Date of Lease:** August 2, 1995  
**Current Annual Rent:** \$75,600.00  
**Expiry Date:** August 1, 2010  
**Term:** 15 years  
**Renewals:** 5 terms of 5 years  
**Legal Description:** A certain piece or parcel of land and all the buildings and improvements situated thereon and located on the east side of Colman Street in the Town of New London, County of New London and State of Connecticut, more particularly bounded and described as follows:  
 Commencing at an iron pipe in the east line of Colman Street being the northwest corner of the within conveyed premises and the southwest corner of land now or formerly of Tulip Realty Co. of Connecticut, Inc. thence south 67°-0' east by and along said land now or formerly of Tulip Realty Co. of Connecticut, Inc. 124.85 feet to an iron pipe and land now or formerly of Thomas F. Dorsey, Jr.; thence south 22°-30' west by and along said Dorsey land 144.40 feet to an iron pipe and land formerly of Jack Lazinsk now of Tasca Motors; thence north 63°-22' west by and along Tasca Motors land 125.17 feet to an iron pipe and the easterly line of Colman Street; thence north 22°-30' east by and along the east line of Colman Street 135.37 feet to the iron pipe at the point of beginning, together with and subject to drainage easements as of record appear.

**Municipal Address:** 1187H Main Street, Wyoming, RI  
**Landlord:** Joseph LaMountain and Earl Elizabeth LaMountain  
**Tenant:** Bess Eaton Donut Flour Co., Inc.  
**Date of Lease:** December 1, 1986 (as extended by agreements dated December 1, 1991 and December 1, 1996)  
**Current Annual Rent:** \$17,280.00  
**Expiry Date:** Nov. 30, 2006  
**Term:** Dec. 1, 2001 – Nov. 30, 2006  
**Renewals:** 1 term of 5 years  
**Legal Description:** [To be provided by Vendor]

**Municipal Address:** 99 Fortin Road, Unit 3B/C, Kingston, RI  
 (University of Rhode Island)  
**Landlord:** Everest Partners, LLC  
**Tenant:** Bess Eaton Donut Flour Co., Inc.  
**Date of Lease:** December 31, 1987  
**Current Annual Rent:** \$34,214.00  
**Expiry Date:** December 31, 1992  
**Term:** 5 years

**Renewals:** 3 terms of 5 years  
**Legal Description:** [To be provided by Vendor]

**Municipal Address:** 70 Old Point Judith Road, Narragansett, RI  
**Landlord:** Paul Gencarelli  
**Tenant:** Bess Eaton Donut Flour Company, Incorporated  
**Date of Lease:** January 1, 2001  
**Current Annual Rent:** \$90,000.00  
**Expiry Date:** December 31, 2020  
**Term:** 20 years  
**Renewals:** 5 terms of 5 years  
**Legal Description:** [To be provided by Vendor]

**Municipal Address:** 732 Tiogue Avenue, Coventry, RI  
**Landlord:** Paul Gencarelli  
**Tenant:** Bess Eaton Donut Flour Company, Inc.  
**Date of Lease:** January 1, 2001  
**Current Annual Rent:** \$124,500.00  
**Expiry Date:** June 30, 2026  
**Term:** January 1, 2001 – June 30, 2026  
**Renewals:** 5 terms of 5 years  
**Legal Description:** Those certain tracts or parcels of land with all buildings and improvements thereon located in the Town of Coventry, County of Kent, State of Rhode Island, bounded and described as follows:

**Parcel I:**

That certain real estate situated in the Town of Coventry, County of Kent, State of Rhode Island and described as follows: That certain part of Lot 7 (seven) on that plat entitled "Plan of South Washington Plat belonging to Frank E. and Edith F. Perkins, Coventry, R.I. June 1, 1932, C.D. Barker, Eng.", bounded and described as follows: Beginning at the north west corner of parcel to be conveyed; thence running easterly, bounded northerly by Lawrence and Jessie Vosburg land, twenty-two (22) feet, thence southerly, bounded easterly by other land now or lately of Frank E. Perkins, one hundred (100) feet; thence turning and running westerly, forty-nine (49) feet bounded southerly by Hazel Street on said Plat, thence turning and running northerly, one hundred three (103) feet more or less, bounded westerly by land now or formerly of Frank E. Perkins.

**Parcel II:**

That certain real estate situated in Coventry, County of Kent, State of Rhode Island and described as follows: Beginning at a bound in the southeast corner of land now or formerly of Howard Watson et ux and at the northeasterly corner of this lot to be conveyed; thence southwesterly, bounded generally easterly by land of

South Washington Plat, Two hundred thirty-eight 89/100 feet to a bound at the southwesterly corner of Lot numbered 19 on said South Washington plat, said mentioned line being a straight line with the easterly line of the other land now or formerly of Howard Watson et ux; thence in a westerly direction one hundred forty-five feet to a bound; thence northerly two hundred fifteen 7/10 feet more or less to the southwest corner of other land now or formerly of Howard Watson et ux; thence easterly, one hundred fifty feet to the point of beginning, bounded northerly by other land now or formerly of Howard Watson et ux, easterly by said South Washington Plat, southerly and westerly by other land now or formerly of Frank E. and Edith Perkins.

Parcel III:

That certain real estate situated in Coventry, County of Kent, State of Rhode Island, and described as follows: Beginning at the northwest corner of the lot to be conveyed at a stone bound in the ground at the new State Road running from Crompton to Maple Root called the Tiogue Road; thence easterly along said State Road, bounded northerly by said road, one hundred and fifty (150) feet more or less; thence southerly one hundred and eighty-five (185) feet more or less, bounded easterly by land now or formerly of Frank E. and Edith Perkins; thence westerly, one hundred and fifty (150) feet more or less to a stone bound set in the ground, bounded northerly by land now or formerly of Frank E. and Edith Perkins; thence northerly one hundred eighty-five (185) feet more or less, bounded westerly by Gilbert S. Hill, Jr. and wife to the place of beginning. Being part of the same premises conveyed to Frank E. and Edith Perkins by deed from William R. Johnson said deed being recorded in Coventry Records in Book No. 41 at page 444. EXCEPTING THEREFROM, however, that certain lot or parcel of land conveyed by Howard M. and Edith M. Watson to Old Stone Bank by deed dated November 14, 1979, and recorded in the Land Evidence Records of the Town of Coventry in Book 129 at page 516.

**Municipal Address:**

400 Warwick Avenue, Warwick, RI

**Landlord:**

Michael L. Caito

**Tenant:**

Bess Eaton Donut & Flour Company, Inc.

**Date of Lease:**

August 8, 1986

**Current Annual Rent:**

\$29,657.00

**Expiry Date:**

August 31, 2006

**Term:**

September 1, 1986 – August 31, 2006

**Renewals:**

2 terms of 5 years

**Legal Description:**

[To be provided by Vendor]

**Municipal Address:** 1334 Park Avenue, Cranston, RI  
**Landlord:** Paul D. Gencarelli  
**Tenant:** Bess Eaton Donut Flour Company, Incorporated  
**Date of Lease:** February 1, 2001  
**Current Annual Rent:** \$130,440.00  
**Expiry Date:** January 31, 2021  
**Term:** February 1, 2001 – January 31, 2021  
**Renewals:** 3 terms of 5 years  
**Legal Description:** Those five lots of land situated in the City of Cranston in the State of Rhode Island, laid out and delineated as Lots Nos. 4 (four), 5 (five), 6 (six), 7 (seven) and 8 (eight) on that plat entitled, "Budlong Extension City of Cranston, R.I. Belonging to the Bodwell Land Co. Esten & Black Engrs., Aug. 1917", recorded in the Records of Land Evidence in said City of Cranston in Plat Book 10 at page 4 and (copy) on Plat Card 225. Said lots together form a parcel bounded and described as follows: Beginning at a stone bound set at the intersection of the southerly line of Park Avenue with the easterly line of Budlong Road; thence easterly bounding northerly on said Park Avenue one hundred sixty (160) feet to land now or lately of Pacco Realty Co., Inc.; thence southerly bounding easterly on the last named land one hundred twenty (120) feet to a corner; thence westerly bounding southerly on the last mentioned land one hundred twenty (120) feet to a corner; thence northerly bounding westerly on land now or lately of Joseph Baldino and wife five (5) feet, more or less, to a corner; thence westerly bounding southerly on the last named land one hundred five (105) feet, more or less, to Budlong Road, thence northerly bounding westerly on Budlong Road twenty-seven and 65/100 (27.65) feet to a stone bound; thence continuing northerly bounding westerly on Budlong Road seventy eight and 5/10 (78.5) feet to the first mentioned stone bound and the point of beginning. Together with all the right, title and interest in and to all land lying in all streets, highways, rights of way and gores abutting on or appurtenant to said premises. Excepting therefrom, a portion of the premises taken by the State of Rhode Island for highway purposes.

**Municipal Address:** 957 Main Street, West Warwick, RI  
**Landlord:** Paul Gencarelli  
**Tenant:** Bess Eaton Donut Flour Company, Incorporated  
**Date of Lease:** January 1, 2002  
**Current Annual Rent:** \$120,000.00  
**Expiry Date:** March 31, 2023  
**Term:** January 1, 2001 – March 31, 2023

**Renewals:****Legal Description:**

5 terms of 5 years

That certain parcel of land situated on the westerly side of Main Street in the Town of West Warwick, Rhode Island, bounded and described as follows:

Beginning at a point in the westerly line of Main Street, said point being a drillhole set at the southwesterly corner of land now or formerly belonging to Louis and Barbara A. Raposa, Jr., et. al; thence running in a general southerly direction bounded easterly by said Main Street a distance of three hundred four and 97/100 (304.97) feet to a R.I. Highway Bound, said bound being twenty-eight (28) feet westerly of and opposite Center Line Bass Line Sta. 30-66 as shown on R.I. Highway Plat No. 1548; thence turning an interior angle of 90° and running in a general westerly direction a distance of four and 00/100 (4.0) feet to a point; thence turning an interior angle of 270° and running in a general southerly direction a distance of fourteen and 31/100 (14.31) feet to an angle point, the last two courses being bounded southerly and easterly, respectively, by said Main Street, thence turning an interior angle of 67°-46'-15" and running in a general westerly direction a distance of fifty-nine and 70/100 (59.70) feet to a drillhole in wall; thence turning an interior angle of 171°-18'-15" and running in a general northwesterly direction a distance of nine and 28/100 (9.28) feet to a drillhole in wall; thence turning an interior angle of 170°-19'-35" and continuing in a general northwesterly direction a distance of one hundred eighteen and 18/100 (118.18) feet to a drillhole in wall, the last three courses being bounded by the Pawtuxet River and by land now or formerly belonging to S.H. Greene and Sons Corporation. Thence turning an interior angle of 167°-32'-40" and continuing in a general northerly direction a distance of seventy-three and 21/100 (73.21) feet to a drillhole in wall; thence turning an interior angle of 168°-22'-31" and running in a general northerly direction of one hundred and 47/100 ± (100.47±) feet to a point, said point being the southwesterly corner of said Raposa land, the last two courses run along a bank and are bounded respectively by said Greene property; thence turning an interior angle of 79°-10'-27" and running in a general easterly direction bounded northerly by said Raposa land a distance of two hundred and fifty-six and 00/100 ± (256.0±) feet to the drillhole at the point and place of beginning. Said last described line forms an interior angle of 75° 30' 20" with first described line. Subject to a storm drain easement.

**Municipal Address:****Landlord:****Tenant:**

6689 Post Road, North Kingstown, RI

Joseph Iacofano

Bess Eaton Donut Flour Company, Incorporated

**Date of Lease:** October 7, 1997 (amended May 5<sup>th</sup>, 1999)  
**Current Annual Rent:** \$94,236.00  
**Expiry Date:** May 4, 2019  
**Term:** 20 years  
**Renewals:** 2 terms of 5 years  
**Legal Description:** That certain tract or parcel of land with all buildings and improvements thereon, situated on the westerly side of Post Road in the Town of North Kingstown, County of Washington, State of Rhode Island, and bounded and described as follows:  
Beginning at a point in the westerly line of said Post Road said point being 475.40 feet southerly from an angle in said Road and also being the northeasterly corner of land belonging now or lately to Joseph J. and Pear E. Krzak; thence running northerly bounded easterly by said Post Road a distance of two hundred and 37/100 (200.37) feet to a corner; thence turning an interior angle of 91°-42'-40" and running westerly a distance of two hundred and 09/100 (200.09) feet to a corner; thence turning an interior angle of 88°-17'-20" and running southerly two hundred and 00/100 (200.00) feet westerly from and parallel to said Post Road a distance of one hundred ninety-three and 86/100 (193.86) feet to said Krzak land, the last two courses bounding on land now or formerly of Norman R. Gravin land; thence turning an interior angle of 93°-17'-10" and running easterly bounded southerly by said Krzak land a distance of two hundred and 33/100 (200.33) feet to said Post Road and the point of beginning, said parcel contains 39,329 square feet of land, more or less. The last course forms an interior angle of 86°-42'-50" with the first course above described. Subject to restrictions, easements and agreements of record.

**Municipal Address:** 370 Putnam Pike, Smithfield, RI  
**Landlord:** Colbea Enterprises, LLC  
**Tenant:** Bess Eaton Donut Flour Company, Inc.  
**Date of Lease:** September 1, 2000  
**Current Annual Rent:** \$3500 per month or percentage rate at 12% of gross sales per month, whichever is greater  
**Expiry Date:** August 31, 2005  
**Term:** 5 years  
**Renewals:** 2 terms of 5 years  
**Legal Description:** That parcel of land, together with all buildings and improvements thereon, located on the southerly side of Putnum Pike in the Town of Smithfield, County of Providence and State of Rhode Island, which parcel is more particularly described as follows:  
Beginning at a rebar with cap at Station 463+37.63, 43.50 feet right of the Putnum Pike reconstruction baseline, said point being the northeasterly corner of the parcel being

conveyed; thence S. 05°-48'-19" W. a distance of 127.50 feet to a point; thence S. 43°-52'-14" W. a distance of 22.00 to a point; thence N. 71°-20'-21" W. a distance of 292.77 feet to a point; thence N. 05°-48'-19" E. a distance of 74.36 feet to the southerly line of Putnam Pike at Station 460+38.11, 45.00 feet right of said baseline; thence easterly along the southerly line of Putnam Pike along a curve to the right of radius 3,775.00 feet, a length of 41.00 feet; thence along said southerly line of Putnam Pike N. 05°-07'-02" E. a distance of 2.00 feet; thence along said southerly line of Putnam Pike S. 84°-52'-58" E. a distance of 209.00 feet; thence along said southerly line of Putnam Pike S. 84°-18'-22" E. a distance of 49.05 feet to the point and place of beginning.

**Municipal Address:**

**Landlord:**

**Tenant:**

**Date of Lease:**

**Current Annual Rent:**

**Expiry Date:**

**Term:**

**Renewals:**

**Legal Description:**

525 Killingly Street, Johnston, RI

Colbea Enterprises, LLC

Bess Eaton Donut Flour Company, Inc.

February 20, 2001

\$3,500 per month or percentage rate at 12% of gross sales per month, whichever is greater.

February 19, 2006

5 years

2 terms of 5 years

That parcel of land situated in the City of Johnston, County of Providence, State of Rhode Island, with a physical address of 525 Killingly Street and more particularly described as follows:

Beginning at a granite bound located at the northwesterly corner of the parcel herein described, said point being the southwesterly corner of property now or formerly belonging to Antonetta Maynard; thence running easterly bounding northerly on said Maynard property for a distance of two hundred nine (209) feet to an iron pipe located at a corner and property now or formerly belonging to Bartolomeo and Elvira D'Arezzo; thence turning an interior angle of 90° and running southerly bounding easterly in part on said D'Arezzo property and in part on property now or formerly belonging to A.T. and T. Inc., for a distance of one hundred twenty one and 25/100 (121.25) feet to a corner and property now or formerly belonging to Thomas and Maria Santagata; thence turning an interior angle of 90° and running westerly bounding southerly on said Santagata property a distance of fifty-nine (59) feet to a drill hole located at a corner; thence turning an interior angle of 270° and running southerly bounding easterly on said Santagata property for a distance of one hundred (100) feet to an iron pipe and other Thomas and Maria Santagata property; thence turning an interior angle of 90° and running westerly bounding southerly on said



Santagata property for a distance of one hundred fifty (150) feet to a spike located at a corner and the easterly line of Killingly Street; thence turning an interior angle of 90° and running northerly bounding westerly on Killingly Street for a distance of two hundred twenty-one and 25/100 (221.25) feet to the point and place of beginning; the last described line forming an interior angle of 90° with the first described line.

**Municipal Address:** 2563 South County Trail, East Greenwich, RI  
**Landlord:** Colbea Enterprises, LLC  
**Tenant:** Bess Eaton Donut Flour Company, Inc.  
**Date of Lease:** January 20, 2002  
**Current Annual Rent:** \$3,500 per month or percentage rate at 12% of gross sales per month, whichever is greater.  
**Expiry Date:** January 19, 2007  
**Term:** 5 years  
**Renewals:** 2 terms of 5 years  
**Legal Description:** [To be provided by Vendor]

**Municipal Address:** Westerly Hospital, 25 Wells Street, Westerly, RI  
**Landlord:** The Westerly Hospital Auxiliary  
**Tenant:** Bess Eaton Donut Flour Co., Inc.  
**Date of Lease:** August 21, 2002  
**Current Annual Rent:** percentage rate at 6% of gross sales per month  
**Expiry Date:** September 30, 2007  
**Term:** October 1, 2002 – September 30, 2007  
**Renewals:** 4 terms of 5 years  
**Legal Description:** [To be provided by Vendor]

**Schedule 2.1(b)(I)**  
**Machinery and Equipment Owned**

Subject to the items referred to in Schedule 2.1(b)(II), all machinery, equipment, furnishings, parts, fixtures and other fixed assets located at and used in conjunction with the operations of the business at each of the following locations:

Store number 902	Groton I
Store number 903	Norwich I
Store number 906	Dunns Corners I
Store number 907	Meriden
Store number 909	Wyoming
Store number 910	Fall River I
Store number 911	Fall River II
Store number 913	URI
Store number 915	Plainfield Pike
Store number 917	Dunns Corners II
Store number 918	Bradford
Store number 919	North Stonington I
Store number 920	Narragansett III
Store number 921	Groton EB
Store number 922	Coventry I
Store number 923	Warwick
Store number 925	North Stonington II
Store number 927	Wakefield
Store number 928	Newport Ave
Store number 929	Swansea
Store number 931	Narragansett II
Store number 932	Cranston
Store number 933	West Greenwich
Store number 934	Ashaway
Store number 935	Bald Hill Rd
Store number 936	Groton II
Store number 937	Old Lyme
Store number 938	Peacedale
Store number 943	West Warwick
Store number 944	North Kingstown
Store number 946	Oak Street
Store number 948	Pawcatuck I
Store number 949	Mystic
Store number 950	Pawcatuck II
Store number 953	New London II
Store number 954	Salem
Store number 956	Coventry II
Store number 957	Granite Street
Store number 958	Norwich II
Store number 959	Charlestown
Store number 960	Vernon
Store number 961	Tiverton
Store number 962	Richmond
Store number 963	Smithfield
Store number 965	Killingly Street
Store number 968	South County Trail
Store number 970	Westerly Hospital
Store number 989	Waterford

79B Tom Harvey Road (Bakery) Westerly, RI - Limited to the personal property as listed on Exhibit A of Schedule 2.3(g).

79 Tom Harvey Road (Corporate Office) Westerly, RI - Limited to the personal property as referenced on Schedule 2.1(b)II, Schedule 2.1(f), Schedule 2.1(i) and Exhibit A of Schedule 2.3(g).

And the hardware listed in Exhibit "A" to Schedule 2.1 (b)(I).